

REMARKS**Double patenting**

The Examiner has issued a provisional nonstatutory double patenting rejection for claims 40 and 42. The Examiner stated that pending claims 40 and 42 are provisionally rejected because they allegedly read on claims 14, 20, 25, 31 and 36 of U.S. Application No. 10/610,909. (See Office Action, p. 3.) Applicant respectfully disagrees and directs the Examiner's attention to Applicant's letter and listing of claims submitted on October 16, 2007 in the '909 application. The listing of claims indicates that, at least by October 16, 2007, Applicant had canceled claims 1-39. Thus, claims 1-39 in the '909 application are not pending. Applicant respectfully requests that the provisional nonstatutory double patenting rejection with regard to the '909 application be withdrawn.

The Examiner stated that pending claims 40 and 42 are provisionally rejected because they allegedly read on claims 14, 16, 18, 20, 25, 31 and 36 of U.S. Application No. 10/811,838. (See Office Action, p. 3.) Applicant respectfully disagrees and directs the Examiner's attention to the most recent Amendment and Response to the Non-Final Office Action filed on June 30, 2008. In that Amendment and Response, Applicant canceled claims 1-39. Thus, claims 1-39 in the '838 application are not pending. Applicant respectfully requests that the provisional nonstatutory double patenting rejection with regard to the '838 application be withdrawn.

The Examiner stated that pending claims 40 and 42 are provisionally rejected because they allegedly read on claims 14, 20, 25, 31 and 36 of U.S. Application No. 10/439,301. (See Office Action, p. 3.) Applicant respectfully disagrees. The '301 application went abandoned in September 2007. Thus, no claims are pending in the '301 application. Applicant respectfully requests that the provisional nonstatutory double patenting rejection with regard to the '301 application be withdrawn.

The Examiner stated that pending claims 40 and 42 are provisionally rejected because they allegedly read on claim 42 of U.S. Application No. 10/811,839. (See Office Action, p. 3.) Without

conceding that claims 40 or 42 read on claim 42 in the '839 application, a terminal disclaimer is filed herewith.

Claim rejections under 35 U.S.C. §103

The Examiner rejected claims 40-45 under 35 U.S.C. 103(a) as “being unpatentable over Ronca et al. (1998) in view of Scott et al. (1987) in view of Gelber et al. (U.S. 6,576,267 B2) in view of Noblie et al. (U.S. 4,265,823) (in light of Dr. Duke’s Phytochemical and Ethnobotanical Database) and in view of Weiner et al. (U.S. 2002/0009448 A1).” (See Office Action, p. 6) The Examiner stated that rejections were maintained for the reasons of record. (See id.)

The Examiner has stated that “Ronca et al. (1998) studied some biochemical mechanisms of the well-known anti-inflammatory activity of chondroitin sulfate...” (Office Action dated June 16, 2006, page 8.) Ronca et al. was published in May 1998. Applicant has amended the priority claim to properly claim priority to U.S. Patent Application No. 09/056,707, filed April 8, 1998, now U.S. Patent No. 6,689,748. The invention of the '748 patent relates to the “treatment of mast cell-induced diseases.” (col. 1, lines 8-9) The '748 patent disclosed that “[m]ast cells...play an important role in allergy and inflammation” and that “[m]ast cells...can secrete numerous...inflammatory mediators.” (col. 1, lines 15-17, 25-26). The '748 patent described one aspect of its invention as a method consisting “of administering to...animals and...human beings an amount of a proteoglycan with mast cell secretion inhibitory activity, such as chondroitin sulfate...” (col. 4, lines 9-13) Therefore, because Ronca et al. was published after the '748 patent was filed, and because the '748 patent described the anti-inflammatory activity of chondroitin sulfate, Ronca et al. cannot be used as part of a 35 U.S.C. § 103(a) obviousness rejection.

The Examiner has stated that Gelber et al. (U.S. Patent No. 6,576,267) disclosed that quercetin was an anti-inflammatory agent. (See Office Action dated June 16, 2006, p. 8.) However, the earliest priority date that Gelber et al. can claim is February 23, 2000. As stated above, Applicant has now amended the priority claim to properly claim priority back to U.S. Patent Application No. 09/056,707, filed April 8, 1998, now U.S. Patent No. 6,689,748. As also stated above, the invention of the '748 patent relates to the “treatment of mast cell-induced diseases.” (col.

1, lines 8-9) The '748 patent disclosed that "[m]ast cells...play an important role in allergy and inflammation" and that "[m]ast cells...can secrete numerous...inflammatory mediators." (col. 1, lines 15-17, 25-26) The '748 patent also disclosed that flavonoids inhibit mast cell secretion. (See col. 3, lines 48-49) One aspect of the '748 patent was to treat mast-cell induced diseases – including inflammation – by administering a proteoglycan combined with a flavonoid, including quercetin as a member of the flavonoid class. (See col. 4, lines 14-19) Thus, because the '748 patent has a filing date prior to the date of Gelber et al., and because the '748 patent describes the use of quercetin to treat inflammatory conditions induced by mast cells, Gelber et al. is not prior art to the instant application for the reasons of record. As such, Gelber et al. cannot be used as part of a 35 U.S.C. § 103 obviousness objection.

In summary, neither Ronca et al. nor Gelber et al. are prior art to the instant application for the reasons of record. Therefore, the combination of art that allegedly supports the obviousness rejection under 35 U.S.C. §103(a) fails because it includes references that are not prior art to the instant application. As such, Applicant respectfully requests that the rejection under 35 U.S.C. § 103(a) be withdrawn.

CONCLUSION

Applicant believes the rejections maintained in the Office Action have been overcome and that the application is in condition for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued.


The Director is hereby authorized to charge Deposit Account No. 08-0219, under Order No. 2003133.126US1, the fee of \$405 filed herewith pursuant to 37 C.F.R. § 1.17(e).

Applicant believe no additional fees are due with this Request for Continued Examination. However, if such a fee is due, or a credit is owed, the Director is hereby authorized to make them to our Deposit Account No. 08-0219, under Order No. 2003133.00126US1.

The Examiner is encouraged to call the undersigned at the telephone number given below to move this application towards allowance.

Dated: September 24, 2008

Respectfully submitted,



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